IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
SECOND APPEAL NO. 06 OF 2001

1. Gram Panchayat Thali, Block Mori,
District – Uttar Kashi,
Through its Pradhan Sri Janak Singh,
S/o Sri Surat Singh.
2. Member (Megha Singh S/o Sri Murti Singh),
Kshetra Panchayat Thali Wand,
Panchayat Mori, District – Uttar Kashi.

.....Appellants/Defendants

Vs

1. Villagers of Village Vijote,
Patti Bangar, Tehsil Purola,
District Uttar Kashi,
Through Sri Prem Lal,
S/o Sri Chimpa Apdutt,
Pradhan of Village Odata,
On behalf of all family of Gram Vijoti.

.....Plaintiff/Respondent/Ist Set.

2. Secretary, District Basic Education Committee.
Uttar Kashi, through its District Basic Education Officer,
Uttarkashi.
3. State of Uttarakhand,
through Collector Uttar Kashi.

.....Defendant/Respondent-IInd Set.

Dated 5.12.2007

Hon'ble Rajesh Tandon,J.

Heard Sri H.M. Bhatia, counsel for the appellants and State Counsel for the respondents.

2. By the present A.O. filed under Section 100 of the Code of Civil Procedure, appellant has prayed for setting aside the judgment and decree dated 2.12.2000 passed by the District

Judge, Uttarkashi in Civil Appeal No. 6 of 2000 (Member Kshetra Panchayat and others Vs. Villagers of Village Vijoti and others) arising out of the judgment and decree dated 25.4.2000 passed by Civil Judge (Junior Division), Purola, District Uttar Kashi in Original Suit No. 5 of 1998 Villagers of Village Vijoti Vs. Secretary District Basic Education Committee and others.

3. Present Appeal was admitted on the following substantial questions of law:

> "1. Whether the learned D.G.C. (Civil) has power to not press the appeal of Gram Panchayat?
> 2. Whether the written permission is required for not pressing the appeal on behalf of Gram Panchayat by the learned D.G.C. (Civil)?
> 3. Whether any resolution of Gram Panchayat or Kshetra Panchayat is required under law for not pressing the appeal by the learned D.G.C. (Civil)?
> 4. Whether the trial Court can grant the injunction against the public policy?
> 5. Whether a person who is not belong to village Vijoti can file a representation suit on behalf of villagers of Village Vijoti?

3. Briefly stated, a suit was filed by the plaintiff being Original Suit No. 5 of 1998 ***Villagers of Village Vijoti Vs. Secretary District Basic Education Committee and others*** praying to the following effect:

> "यह कि वास्तविकता यह है कि स्वीकृत विद्यालय ओगमेर विजोती के निवासियों को लाभान्वित करने के आधय से खोला गया है और मध्यस्थ स्थल पर भवन का निर्माण हो रहा है। किन्तु वादी प्रेम लाल अपनी निजि स्वार्थ पूर्ति उक्त विद्यालय भवन कार्यदाई संस्था है अपनी ग्राम पंचायल ओडाठा को निर्धारित कराने के आधाय से दावा चला रहा है। जब कि ग्राम पंचायत थली उक्त विद्यालय भवन की कार्यदायी संस्था स्वंय को बता रही है। ऐसी परिस्थितियों में दोनों ग्राम पंचायतों के कार्यदायी संस्था से सम्बन्धित जो विवाद उत्पन्न है उसका निपटारा प्रार्थीगण किसी अन्य सरकारी निकाय द्वारा विद्यालय भवन का

निर्माण करवाना चाहते हैं और विलम्ब विद्यालय भवन का पूर्ण निर्माण तथा विद्यालय का संचालय चाहते हैं।"

4. The suit was decreed on 25.4.2000 by passing an order to the following effect:

"वादी का दावा प्रतिवादीगण के विरूद्ध सव्यय आज्ञप्त किया जाता है, प्रतिवादी सं0 1 व 5 द्वारा दिनांक 18.3.98 को विवदित बेसिक स्कूल विजोती के स्थान पर ओगमेर में अंतरण करने का प्रस्ताव एवं प्रतिवादी 5 द्वारा दिनांक 31.3. 98 का आदेध /निर्णण बेसिक धिक्षा अधिनियम 1972 के प्राविधानों अनुरूप नहीं है और आदेध तद्नुसार निरस्त किया जाता है"

5. Thereafter, against the said order, defendants have preferred an Appeal being Civil Apeal No. 6 of 2000 ***Member Kshetra Panchayat Thali and others Vs. Villagers Vijoti and others.***

6. The appeal was dismissed on 2.12.2000 by the District Judge, Uttarkashi by passing following order:

"This appeal has not been pressed for decision by D.G.C. (Civil). Hence the appeal is dismissed. File be consigned."

7. Counsel for the appellant has submitted that D.G.C. (Civil) is not empowered for not pressing the appeal of Gram Panchayat.

8. *In* ***Swaran Singh Vs. Kishan Singh (Dead) By LRs [2007 (103) RD 109],*** the Apex Court has observed as under:

“3. An application in terms of Order XLI, Rule 19 of the Code of Civil Procedure, 1908 (in short the Code) read with section 151 of the Code was filed to restore the appeal for deciding the same on merits. It was indicated in the application for restoration as to why there was non appearance on the date fixed. In the application it was categorically stated that the matter was listed at item No. 260 before the learned Single Judge. When the matter was called learned Counsel for the appellant was arguing an other matter before a Bench of Hon’ble the Chief Justice. In the case of hand respondents were yet to put appearance,. So the assisting Counsel was instructed to attend the Court to note the next date. By the time the assisting Counsel reached the Court, the matter had already been taken up and dismissed, for want of prosecution. It is submitted that the High Court did not take note of the aforesaid factual aspects and on the contrary dismissed the application for restoration on the ground that the matter was decided on merits.

4. Learned counsel for the respondents submitted that since the matter had been decided on merits there was no scope for recalling the order.

5. It is to be noted that in the application for restoration the reasons for non appearance at the time when the matter was taken up had been indicated. It was noted that the matter was fixed for filing of the vakalatnama of the respondents. There was uniintentional absence and the reason for the same was indicated. The High Court has not found the reason indicated to be in any manner incorrect or untrue. Merely because the appeal has been dismissed on merits that could not have been a ground to refuse restoration of the appeal.

6. As rightly contended by learned Counsel for the appellant the reason for non appearance when the matter was

taken up had been indicated. There is no dispute that the factual scenario as projected by the appellant was the correct one. Mere fact that the appeal was dismissed on merits could not have been a ground to refuse restoration. Accordingly, we set aside the impugned order of the High Court and direct restoration of the second appeal."

9. However, it is directed that in case, the appellant has any grievance, he may approach the District Judge, Uttarkashi, who may consider his grievances by filing an application under Order 41 Rule 19 of the Code of Civil Procedure. Thereafter the appeal shall be decide on merits.

10. Subject to aforesaid for fresh hearing of the appeal after moving the proper application, Second Appeal is dismissed. No order as to costs.

(Rajesh Tandon, J.)
5.12.2007

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